

24 October 1946

# LAW LIBRARY ARIZONA ATTORNEY GENERAL

Mr. Charles Rogers  
County Attorney  
Graham County  
Safford, Arizona

Dear Mr. Rogers:

We acknowledge receipt of your letter of 8 October 1946, requesting our opinion regarding taxes on property formerly owned by the Arizona General Utilities Company but recently sold to the towns of Safford and Thatcher and the R.E.A. Co-op of Graham County. Your letter does not disclose the date on which the sale was finally consummated, nor does it set forth the nature of the R.E.A. Co-op. As to the latter point, we assume for the purpose of this opinion that the Co-op is a governmental agency.

Article 9, Section 2 of the Constitution of Arizona, provides in part:

"That there shall be exempt from taxation all federal, state, county and municipal property \*\*\*".

This has been re-enacted by the legislature in Section 73-201, A.C.A. 1939. Since municipal property is exempt from taxation, no tax lien can attach to any such property. Therefore, we must first determine what effect, if any, the time of acquisition of such property by the municipality (unknown to us in this case) has upon the question at hand.

It seems to be settled in this jurisdiction that although the lien for property taxes attaches on the first Monday in January of each year (Section 73-506), such lien does not mature until the amount of the tax has been ascertained and determined. Territory v. Perrin, 9 Ariz. 316, 83 Pac. 361. This case has been cited with approval in other jurisdictions in State v. Snohomish County, 128 Pac. 667 (Wash.); City of Portland v. Multnomah County, 296 Pac. 48 (Ore.); City and County of Denver v. Tax Research Bureau, 71 Pac. (2d) 809 (Colo.); City of Laurel v. Weems, 56 So. 451 (Miss.); U. S. v. Certain Land of the City of St. Louis, 29 Fed. Supp. 92.

Since there can be no effective lien until the amount of the tax is known, it becomes necessary to determine the time at which the tax can be finally ascertained. The State Board of Equalization is directed by statute to meet on the first Monday

Charles Rogers

Asst.

24 Oct. 1946

in August, during which meeting it shall fix the rate of tax for state purposes (Section 73-103), and the Board shall then, on or before the second Monday in August of each year, notify the board of supervisors of each county of the rate of taxes to be levied and collected within the county for state purposes (Section 73-103). Upon receiving notice of the state tax rate, the board of supervisors of each county must complete the assessment roll (Section 73-422) and assess the taxes upon the taxable property of the county in proportion to the particular property valuations (Section 73-423). Because of these provisions, the amount of tax on a particular piece of property cannot be definitely determined until the assessment by the board of supervisors is completed and the lien for taxes does not mature until this is done.

For these reasons, we are of the opinion that, if the sale of the property in question to the municipalities was completed prior to the date on which the amount of taxes was definitely ascertained, no tax lien matured and the property is not subject to sale for such taxes. Furthermore, neither the former owner nor the municipalities can be held liable for the same.

We are now faced with the question of whether or not an existing matured tax lien is extinguished when the property against which the lien has accrued is acquired by a governmental agency. There is a decided conflict in the authorities on this point. The majority rule appears to be that acquisition of title to land by a governmental agency wipes out prior tax liens against the property. 158 A.L.R. 565. However, there is a substantial line of cases holding that a tax lien is not extinguished under such circumstances. 158 A.L.R. 569.

In State ex rel Poterson v. Maricopa County, 38 Ariz. 347, 300 Pac. 175, where the state foreclosed a mortgage lien owned by it, it was held that existing tax liens merged in the superior title of the state.

An attempt to foreclose a tax lien which matured prior to the acquisition of the property by a municipality would be to try to subject municipally owned property to taxation in violation of Section 2, Article 9, Constitution of Arizona, which provides that such property shall be exempt from taxation. Therefore we feel that Arizona would follow the majority rule.

On the basis of the authorities set out above, it is the opinion of this office that a tax lien is extinguished when the property against which it is outstanding is acquired by a governmental agency, including a municipality, and that such lien cannot be enforced against the property. This opinion is restricted to a discussion of real property taxes only.

Very truly yours,

JOHN L. SULLIVAN, Attorney General

BURKE SUTTER, Assistant Attorney  
General  
46-129